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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO.     | CONFIRMATION NO.              |
|-----------------|-------------|----------------------|-------------------------|-------------------------------|
| 10/602,285      | 06/23/2003  | Matthew P. Berry     | 28773.04002             | 9115                          |
| 7590            | 07/12/2005  |                      |                         | EXAMINER<br>BROOKS, MATTHEW L |
|                 |             |                      | ART UNIT<br>3629        | PAPER NUMBER                  |
|                 |             |                      | DATE MAILED: 07/12/2005 |                               |

Please find below and/or attached an Office communication concerning this application or proceeding.

| <b>Office Action Summary</b> | <b>Application No.</b>        | <b>Applicant(s)</b> |
|------------------------------|-------------------------------|---------------------|
|                              | 10/602,285                    | BERRY, MATTHEW P.   |
|                              | Examiner<br>Matthew L. Brooks | Art Unit<br>3629    |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 23 June 2003.

2a)  This action is FINAL.                            2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

4)  Claim(s) 1-6 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) 1-6 is/are rejected.

7)  Claim(s) \_\_\_\_\_ is/are objected to.

8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All    b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 6/23/2003.

4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.  
5)  Notice of Informal Patent Application (PTO-152)  
6)  Other: \_\_\_\_.

## DETAILED ACTION

### *Claim Objections*

1. Claims 2-6 are objected to because of the following informalities: The claims depend from claim 10, however there is no claim 10. For purposes of examination Examiner had the claims depend from claim 1. Appropriate correction is required.

### *Claim Rejections - 35 USC § 102*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-3 and 5 are rejected under 35 U.S.C. 102(b) as being taught by 5,628,412 (Hulls).

4. With respect to **claim 1**: Hulls teaches a structure for containing recyclable waste (Column 3, 50-55); and indicia disposed on the structure, the indicia identifying the value of the recyclable waste contained by the structure (Column 3, 11-19).

5. With respect to **claim 2**: Hulls teaches wherein the indicia identifies the value by identifying a material type and a weight (Column 3, 11-19; “contents known” and bar coding which is capable of storing and identifying any data including type and weight of contents).

6. With respect to **claim 3**: Hulls teaches wherein the indicia is a color (Column 3, 12-14; “color coded”).

7. With respect to **claim 5**: Hulls teaches  
wherein the indicia is a symbol printed on an outer surface of the structure  
(Column 3, 11-19).
8. **Claims 1 and 4** are rejected under 35 U.S.C. 102(b) as being taught by  
5,251,761 (Hansen).
9. With respect to **claim 1**: Hulls teaches  
a structure for containing recyclable waste; and indicia disposed on the structure,  
the indicia identifying the value of the recyclable waste contained by the structure  
(Column 2, 25-40).
10. With respect to **claim 4**: Hulls teaches  
wherein the indicia is a sticker applied to an outer surface of the structure (Column 3;  
45-68 and Column 4, 1-5).

### ***Claim Rejections - 35 USC § 103***

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all  
obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.
12. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining  
obviousness under 35 U.S.C. 103(a) are summarized as follows:
  1. Determining the scope and contents of the prior art.
  2. Ascertaining the differences between the prior art and the claims at issue.

3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

13. **Claims 1 and 6** are rejected under 35 U.S.C. 103(a) as being unpatentable over 5,251,807 (Capaci) in view of 5,251,761 (Hansen).

Capaci teaches using a structure for containing recyclable waste which comprises the same class of material as the recyclable waste (Column 1, 10-15). However, it does not teach indicia disposed on the structure, the indicia identifying the value of the recyclable waste contained by the structure.

Hansen teaches indicia disposed on the structure, the indicia identifying the value of the recyclable waste contained by the structure for the benefit of accrediting the source of the recyclable waste (Column 6, 22-35).

Therefore it would have been obvious to one having ordinary skill in the art at the time of the invention was made to further modify the structure of Capaci so as to include an indicia disposed on the structure as per the teachings of Hansen, for the advantage of accrediting the source of the recyclable waste.

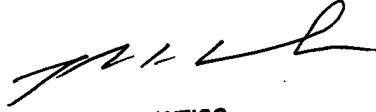
### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Matthew L. Brooks whose telephone number is (571) 272-8112. The examiner can normally be reached on Monday - Friday; 8 AM - 5 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Weiss can be reached on (571) 272-8112. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

MLB  
7/07/2005



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